

Corona crisis: Human rights must guide the political response

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Deutsches Institut
für Menschenrechte

Position Paper

Corona Crisis: Human Rights Must Guide the Political Response

March 2020

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1 Introduction

On the 11th of March, the World Health Organization (WHO) declared the outbreak of the viral disease COVID-19 to be a pandemic, describing it as an infection with “alarming levels of spread and severity” of concern to the entire world that calls for “urgent and aggressive action”.¹ The number of cases is increasing exponentially in many countries, and the death toll has been rising just as dramatically in many countries.

Many states have taken action to slow the spread of the pandemic since the WHO made this announcement. Over two billion people have come under measures restricting or prohibiting movement outside of the home, for instance.² In Germany, too, extensive limitations substantially restricting social interaction with persons outside one’s household have been in effect since 23 March 2020. The corona crisis has a specific human rights dimension: it calls for states to protect one of the core human rights for substantial percentages of humanity, and the responses to that call are having numerous impacts on the realisation and protection of human rights.

Human rights provide standards and binding principles that can and must guide states in their responses to the pandemic. The state’s duty to ensure the protection of the health of all persons on an equal basis derives from the human right to health. In crisis situations, the state can, in principle, limit other human rights in pursuit of this duty. The legitimate aim of protecting public health must not result in excessive limitations on other rights, however, nor may it result in discriminatory treatment of particular population groups.

Fundamental and human rights continue to apply in full even during a crisis like the present one.³ Limitations on human rights must be assessed according to the specific standards associated with each fundamental and human right being affected. In making this assessment, states must consider the specific challenges raised by the pandemic – particularly, the transmission paths of the coronavirus, its long latent period, the lack of symptoms in many of those infected and the lethal risk that the virus poses for certain population groups – and what they imply for an effective response to the pandemic. Thus, extensive limitations on fundamental and human rights may be permissible.

The principle of proportionality demands that such limitations should be of strictly limited duration and that their efficacy and impacts should be closely monitored in order for them to be modified as necessary. It is precisely in exceptional situations that the strengths of a state that is governed by the rule of law and committed to human rights are most evident. They guarantee that the state will fulfil its primary purpose: the realisation and protection of the human rights of all persons.

¹ <https://unric.org/de/erklaerung-zu-covid-19/> (retrieved: 25 Mar. 2020).

² One billion as of 21 Mar. 2020, <https://www.afp.com/de/nachrichten/3966/ausgangsbeschaenkungen-fuer-knapp-eine-milliarde-menschen-wegen-corona-krise-doc-1q27g03>; once India introduced a movement control order as well, the global news agency AFP calculated that the number rose to 2.6 billion <https://www.afp.com/fr/infos/334/coronavirus-un-tiers-de-lhumanite-confiner-les-jo-reportes-doc-1q478v14> (retrieved: 25 Mar. 2020).

³ Unlike both the International Covenant on Civil and Political Rights and the European Convention on Human Rights, Germany’s Basic Law (Grundgesetz) does not provide for derogation of fundamental rights in the event of a disaster. See below for more detail on the application of fundamental and human rights in exceptional circumstances.

2 Central reference: the right to health

Safeguarding the right to health of every individual is front and centre in the response to the pandemic. The right to enjoy the highest attainable standard of physical and mental health, contained in article 12 of the International Covenant on Economic, Social and Cultural Rights (UN ICESCR), is the central point of reference for protections against an epidemic. Germany – like most countries – has adopted this human rights treaty, which has the force of federal law in Germany. Under article 12 of the ICESCR, states have a duty to take effective action necessary for the “prevention, treatment and control of epidemic, endemic, occupational and other diseases”.⁴ In this context, the right to health is considered to be both closely linked to and dependent on the realisation of other rights, including the rights to food, housing, work, education, human dignity, life, equality and freedom from discrimination, the prohibition of torture, the right to privacy and access to information, and the freedoms of association, assembly and movement.⁵ These rights and freedoms and others touch on aspects that are integral to the right to health.

The right to health provides for health facilities, goods and services (a) to be available in sufficient quantity, (b) to be physically and financially accessible to all on a non-discriminatory basis, including to socially disadvantaged groups, and (c) to be acceptable, meaning that they must respect medical ethics and be culturally appropriate, as well as (d) to be scientifically and medically appropriate and of good quality.⁶

In a statement she made on 6 March 2020, Michelle Bachelet, the UN High Commissioner for Human Rights, pointed out that “our efforts to combat this virus won’t work unless we approach it holistically, which means taking great care to protect the most vulnerable and neglected people in society, both medically and economically.”⁷ Dunja Mijatović, the Council of Europe Commissioner for Human Rights, has emphasised that “[i]t is crucial that the authorities take measures that do not lead to discrimination and are proportionate to the aims pursued.”⁸

Every state must assess the appropriateness of its actions during the corona crisis from this perspective. The international human rights bodies provide guidance on how to do so.

3 Human rights during a state of emergency

The Siracusa Principles⁹, adopted by the Economic and Social Council of the United Nations in 1984, the UN Human Rights Committee’s general comment on derogations

⁴ The quote is taken from the UN Committee on Economic, Social and Cultural Rights, which monitors states’ compliance with the Covenant. UN, Committee on Economic, Social and Cultural Rights (2000): The right to the highest attainable standard of health. General Comment No. 14, UN-Doc. E/C.12/2000/4; para. 16. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4 (retrieved: 25 Mar. 2020).

⁵ UN, Committee on Economic, Social and Cultural Rights (2000), see footnote 4, para. 3.

⁶ UN, Committee on Economic, Social and Cultural Rights (2000), see footnote 4, para. 12.

⁷ UN, Office of the High Commissioner for Human Rights (06 Mar. 2020): Press release: Human rights need to be front and centre in response, says Bachelet. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx> (retrieved: 25 Mar. 2020).

⁸ Council of Europe, Commissioner for Human Rights (16 Mar. 2020): Statement: We must respect human rights and stand united against the coronavirus pandemic. <https://www.coe.int/en/web/commissioner/-/we-must-respect-human-rights-and-stand-united-against-the-coronavirus-pandemic> (retrieved: 25 Mar. 2020).

⁹ UN, Economic and Social Council (1984): Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN-Doc. E/CN.4/1985/4, Annex (1985).

during a state of emergency¹⁰ and the case law of the European Court of Human Rights¹¹ put the standards that apply to limitations imposed on human rights due to a national emergency into concrete terms. According to these, the limitation clauses contained in the human rights treaties themselves are the first standards against which any limitation must be measured.

Any action taken to protect the population that limits human rights must pursue a legitimate aim and be lawful – i.e. such actions must be based in and comply with the law – as well as necessary and proportionate to their aim. Only when these requirements cannot be met, can states, subject to very stringent conditions, derogate from their human rights obligations. This does not mean that a blanket suspension of human rights is possible; rather, it means that derogation in the form of a specific measure is allowed if it is strictly required by the exigencies of the situation.¹²

In addition, exceptional circumstances must be restricted in geographical scope, if possible, and always in duration. No limitation on rights may have a discriminatory effect on specific population groups, particularly disadvantaged groups. The state must continually verify that the state of emergency continues to exist and must examine the possibility that imposed measures can be attenuated; persons affected by such measures must have access to effective protection of their rights.

Some human rights are absolute rights and thus cannot be limited even during an emergency; freedom from torture and other inhuman or degrading treatment is one such right. Finally, it should be emphasised that the UN ICESCR does not contain provisions providing for a derogation from human rights obligations in exceptional circumstances. UN Committee on Economic, Social and Cultural Rights has also emphasised, specifically in the context of its General Comment on the right to health, that states core obligations under the ICESCR are non-derogable, i.e. states cannot, under any circumstances, fail to comply with these obligations.¹³

In view of the gravity of the threat, there is a danger that combatting it will be viewed in the public (legal and) policy debate in Germany – and in other countries – as taking priority over concerns about limitations on fundamental and human rights on the principle that “necessity has no law”. The urgency of the need for an effective response encourages a sense that there are no alternatives and a tendency to deprioritize consideration of the efficacy of measures and the gravity of their impacts on individuals and society. Yet human rights demand this consideration. A state of emergency is often seen as “the hour of the executive”, yet legislatures bear no less responsibility during an emergency for ensuring the realisation and protection of fundamental and human rights, both in the context of legislation and by monitoring and

¹⁰ UN, Human Rights Committee (2001): General Comment No 29: Article 4: Derogations during a state of emergency, UN-Doc. CCPR/C/21/Rev.1/Add.11 (2001). The UN Human Rights Committee watches over states’ compliance with International Covenant on Civil and Political Rights.

¹¹ Analysis of case law on article 15 of the European Convention of Human Rights: European Court of Human Rights (19 Dec. 2019): Directorate of the Jurisconsult. Guide on Article 15 of the European Convention on Human Rights: Derogation in times of emergency. www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf; Summary of case law: European Court of Human Rights (2020): Derogation in times of emergencies. Factsheet, March 2020. https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf (both retrieved: 25 Mar. 2020)).

¹² UN, Human Rights Committee (2001), see footnote 10, para. 4; UN, Economic and Social Council (1984), see footnote 9, section C, paras. 52 and 53.

¹³ UN, Committee on Economic, Social and Cultural Rights (2000), see footnote 4, para. 47.

supervising executive action. Effective judicial relief must continue to be accessible to persons affected by such action as well.

With good cause, Germany's constitution, the Basic Law (Grundgesetz), does not recognise any suspension of fundamental rights during a state of emergency – neither in the event of a disaster nor in that of a “state of defence”.¹⁴ The provisions of the international human rights treaties provide a helpful standard for use in assessing more precisely the strict proportionality of interference with fundamental and human rights in such situations.

4 Responses and measures in Germany thus far

Thus far, the response from the Federal Government and the measures introduced by the federal and Länder governments are recognisably underpinned by a desire to comply with these human rights requirements and criteria while attempting to stem the pandemic and thus safeguard the right to health. Public debate about the response to the crisis thus far makes this clear, particularly in the context of the extensive restrictions on close personal contacts now in place. Measures intended to cushion the impacts of these restrictions on groups that are particularly strongly affected by them are being planned or are already in place.

It has already become clear that a great many other fundamental and human rights must be considered when taking action to combat the pandemic. The current or future measures include, in particular, measures to safeguard the right to housing and the right to work as well as action to strengthen the right to social security (articles 11, 6 and 9 of the UN ICESCR). These include, for instance, the expansion of short-time work allowance schemes to preserve jobs and the provision of direct financial support to companies, tax deferrals and interest free loans.¹⁵ The measures are also aimed at self-employed persons, with and without employees, who make up a rapidly growing group in Germany.¹⁶ The draft “social welfare package” expands the group of persons eligible for unemployment benefits II (known as “Hartz Vier” benefits) and makes it easier to apply for them.¹⁷ A plan to provide additional benefits to low-income parents who suffer loss of income also serves to strengthen the right to social security.¹⁸ To safeguard the right to housing, legislation aimed at protecting tenants from eviction if they are unable to pay their rent as a result of the crisis has been drafted.¹⁹ Efforts to

¹⁴ Under the German constitution, a “state of defence” can be declared when German territory is under attack by an armed force or imminent threat thereof –*trans*.

¹⁵ On the short-time work allowance scheme see the social protection package (Sozialschutz-Paket: see footnote 17) on the other measures see <https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Schlaglichter/Corona-Schutzschild/2020-03-13-Milliarden-Schutzschild-fuer-Deutschland.html> (retrieved: 25 Mar. 2020).

¹⁶ See <https://www.bundesregierung.de/breg-de/themen/coronavirus/soforthilfen-beschlossen-1733604> (retrieved: 25 Mar. 2020).

¹⁷ Proposed wording for drafting legislation with a package of social protection measures in response the coronavirus SARS-CoV-2 (Sozialschutz-Paket): Formulierungshilfe für die Koalitionsfraktionen für einen aus der Mitte des Deutschen Bundestages einzubringenden Entwurf eines Gesetzes für den erleichterten Zugang zu sozialer Sicherung und zum Einsatz und zur Absicherung sozialer Dienstleister aufgrund des Coronavirus SARS-CoV-2. https://www.bmfv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Corona-Pandemie.pdf?__blob=publicationFile&v=3 (retrieved: 25 Mar. 2020).

¹⁸ On the “emergency child benefit” see <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/finanzielle-unterstuetzung> (retrieved: 25 Mar. 2020).

¹⁹ Proposed wording for drafting legislation to mitigate the consequences of the pandemic in the area of civil, bankruptcy and criminal law: Formulierungshilfe „Entwurf eines Gesetzes zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht“

safeguard the right to health include planned measures aimed primarily at providing financial security to clinics to enable them to become better equipped and to make up for lost income due to keeping intensive care beds available to treat COVID 19 patients.²⁰ Numerous other measures are being taken and funded by Länder and local governments.

In light of recommendations from virologists and epidemiologists, the political deliberations and public debate about the measures aimed at reducing the risk of contagion have focused on restricting close personal contacts. Human rights demand that the state weigh the various legally protected rights and strike a balance: that the Federal Government is attempting to do so has been apparent in its communications, particularly in the address given by the Federal Chancellor on 19 March 2020. Her appeal for solidarity within society should be understood, in part, as an expression of the desire to comply with the principle of proportionality, which permits grave limitations on fundamental and human rights of this kind only as a last resort.

At the same time, the Federal Chancellor's appeal makes it clear that while respecting human rights is an obligation of the state, it is also one that demands solidarity from each individual person. Admittedly, one first has to learn that, in the current situation, one stands in solidarity with others by keeping one's distance from them, rather than by providing support directly to people affected, as was the case during and after the "summer of migration" in 2015. With respect to future measures and further developments, it will be important for the state to facilitate and promote concrete action expressing solidarity with others.

The federal and Länder governments are striving to state clearly the reasons that the measures being taken are lawful and necessary and proportionate to their aim. It is also clear that an effort is being made to ensure that persons living in precarious and difficult situations are not overlooked in this context. Moreover, the Federal Government has made it known that it will be reviewing all measures on a regular basis and adjusting them as necessary.

Whether the measures are achieving their defined objective and how they are affecting other human rights should also be assessed in a timely manner. Here, the Bundestag and the Länder parliaments must perform an important supervisory function to safeguard human rights, as do the media and the public.

5 Whose human rights should receive special attention?

Human rights principles demand that special and priority attention be given to people in vulnerable situations. These include, for instance, older persons, homeless persons (roofless and homeless) and persons who are compelled by government order to reside in a particular place, but also persons living in cramped housing conditions or in residential institutions for persons with disabilities and also persons with disabilities

https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Corona-Pandemie.pdf?__blob=publicationFile&v=3 (retrieved: 25 Mar. 2020).

²⁰ Draft legislation on compensating hospitals and other health facilities for financial burdens associated with COVID-19 (COVID-19-Krankenhausentlastungsgesetz). https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/C/Entwurf_COVID-19-Krankenhausentlastungsgesetz.pdf (retrieved: 25 Mar. 2020).

who are dependent on support, as well as minors and adults living in poverty. In many cases, members of vulnerable groups have neither the opportunity nor resources necessary to make their views on policies heard in the public arena. This makes it all the more important that the federal, Länder and local legislatures and executive governments give serious consideration to information, warnings and suggestions coming from civil society.

5.1 Older persons and persons with disabilities

Older persons are particularly affected by the crisis. In addition to facing a higher risk of developing severe illness after COVID-19 infection, physical distancing measures often have a particularly harmful impact on them, as these can result in isolation and loneliness, the severing of contacts with family and friends. On a positive note, the need to provide older persons with special protections have been and continue to be key factors motivating many states to respond so extensively and rigorously to the course of the pandemic. Particular support should be given to those older persons whose lack of familiarity with social media prevents them from using these as channels to maintain social contacts, and to those who are unable to use the telephone due to a hearing impairment. Solutions must be found for replacing foreign nursing and care personnel in in-home care settings; this is a problem which will be affecting many families in the coming months.

5.2 Persons with disabilities

The same can be said for those persons with disabilities who have a chronic illness that puts them in a high-risk group. They, too, are dependent to a large degree upon the solidarity of all of us, solidarity that we express by changing our behaviour to help curb the spread of the virus. In the case of this group of persons too, supporting the maintenance of social contacts should be a priority.

It is essential to ensure that persons who are deaf and persons with learning difficulties, for instance, are not cut off from access to up-to-date information during the corona crisis through a failure to translate press conferences or official notices into sign language or simple language. The housing situation of many persons with disabilities, such as those living in residential institutions, is another example of a situation giving rise to particular vulnerability. In this case, there is a risk that general prohibitions of personal contacts and visits will prevent residents from having any contacts with the outside world, thus resulting in an isolation even more stark than that experienced by the rest of the population. At the same time, effective protection against infection must be ensured. Furthermore, it is particularly important that complaint mechanisms continue to function, and that barrier-free assistance and support services should not be reduced but continue to operate.

5.3 Homeless persons

Homeless persons currently face a particularly high risk. If they are roofless and living on the streets (rough sleepers) or accommodated in shelters by law by the local authorities, they do not have the option to stay within their own four walls to protect themselves from infection. In some places, efforts are underway at the local level to find ways to provide protections and quarantine possibilities for these groups of

persons and ways to maintain an infrastructure – day care facilities, food banks or health care – to provide for them. Governments must work with social organisations on this to find flexible ways to provide support that take individuals' specific needs into account, i.e. those involved in keeping a pet or having an addiction.

It is necessary to ensure that homeless persons who live in a collective shelter run by a local government are able to maintain physical distance from others, up to and including the possibility of in-shelter quarantine, and that it is possible to isolate those who are ill. Here, too, creative solutions are called for. The possibility of using the hostels and hotels that are standing empty because of the pandemic for temporary accommodation should be examined.

To prevent more people from becoming roofless, a temporary suspension of forced evictions should be introduced;²¹ no penalties should be imposed for violating the restrictions on close personal contacts, as there are people living in household-like communities on the streets.

5.4 Refugees and displaced persons

The same applies to refugees and displaced persons who are living – often with a great many others – in collective accommodation facilities where they use shared kitchens or have to wait in line for meals to be delivered. There have been reports in the media of entire facilities being locked down, i.e. all residents prohibited from leaving, after a resident tested positive for COVID-19.²² This type of reaction constitutes a disproportionate limitation in comparison to the treatment of the rest of the population. When cases are detected, the priority should be on finding other accommodation options, for instance, youth hostels that are standing empty or rural boarding schools.

5.5 Persons in criminal detention

Another group of persons who are compelled to reside in a particular place by a government order are persons in pre- and post-trial criminal detention. Here too, human rights dictate that the possibility of physical distancing must be safeguarded. As this often proves very difficult, measures which reduce or postpone periods of detention are very welcome from a human rights perspective. For instance, the imprisonment of persons who, having failed to pay a fine, are due to serve a period of detention (*Ersatzfreiheitsstrafe*) has been postponed in many places.²³

5.6 Persons affected by domestic violence

Restrictions on close personal contacts can also make it impossible for people who have to live in cramped housing conditions to avoid one another. Many domestic and international experts have warned that it is therefore probable that domestic violence

²¹ This is being arranged in Hamburg, for instance: <https://www.hamburg.de/nachrichten-hamburg/13743774/corona-zwangsräumungen-und-stromsperren-werden-ausgesetzt/> (retrieved: 25 Mar. 2020).

²² <https://www.tagesspiegel.de/politik/asylsuchende-an-sieben-standorten-infiziert-die-coronakrise-erreicht-die-fluechtlingsheime/25665480.html> (retrieved: 25 Mar. 2020).

²³ <https://www.tagesspiegel.de/berlin/ressourcen-sparen-wegen-coronavirus-berliner-gefaengnisse-schieben-haftantritte-auf/25644592.html> (retrieved: 25 Mar. 2020).

will increase. Those affected the most are women and children. The state should make arrangements for the accommodation of perpetrators of domestic violence so that they can be compelled to leave the home by means of an expulsion order (Wegweisung or *Go-Order*) in compliance with the Act on Protection against Violence (GewSchG: Gewaltschutzgesetz). The Federal Government has also announced that it will be supporting emergency hotlines and shelters.²⁴

5.7 Children, youth and families

The corona crisis is placing a particular burden on children, youth and families who depend on skilled professionals for special assistance and support. If school closures continue for a longer period support for these children will be particularly vital. In many cases, with schools closed, there is no suitable learning environment available to them. Many of these children do not receive sufficient support from their parents. This relates both to their right to education and to their right to food, as they are no longer receiving school meals. In single-parent households, in particular, the demands of childcare can reduce the time that parents can spend on work, which can have grave financial consequences. Governments should investigate whether and how the childcare possibilities that currently exist could be made available to single-parent families. Once restrictions on close personal contacts begin to be eased, priority should be given to access to care/education for children from these families.

The impact of the closure of schools and kindergartens is also having particularly severe impacts on the right to education of children of refugees and displaced persons. These effects become more severe when visitor restrictions at collective accommodation facilities make it impossible for external volunteers to provide support. The human right to education is the core right that makes it possible for children to develop their personalities; it is very difficult to make up for time that has been lost. Thus, as the duration of restrictions on close personal contacts lengthens, more attention should be paid to this group of children.

There is now a need to enable the social organisations that provide support and care to these persons to return to their work so that particularly vulnerable and marginalised persons can receive appropriate attention and support. These organisations will not be able to do so if they cannot obtain sufficient liquidity and are forced to file for insolvency, particularly since many of them, subject as they are to the law governing public-benefit organisations, are not able to maintain liquidity reserves or risk reserves. In addition, most of the welfare associations depend on the assistance of volunteers, and the age of many of these places them in high COVID-19 risk groups. It would be beneficial to afford state support for the recruitment of new volunteers to meet the growing demand for their services.

²⁴ <https://www.bmfsfj.de/bmfsfj/aktuelles/reden-und-interviews/dr--franziska-giffey--wir-wollen-den-zugang-zum-kinderzuschlag-deutlich-erleichtern-/153930> (retrieved: 25 Mar. 2020).

6 Human rights responsibilities extend beyond state borders

In Germany and in most other European Union countries, responses to the corona pandemic have resulted in a focus on the domestic situation of individual countries. This is problematic, because the corona pandemic does not recognise state borders and global challenges require collective responses. Moreover, the corona crisis does not absolve any EU member countries of their Community obligations vis-à-vis the respect and protection of human rights.

6.1 Protection of refugees and displaced persons

To protect human rights, action at the European level is urgently needed to change the way persons seeking protection at the EU's external borders are treated. The situation in the overcrowded refugee camps on the Greek islands was already untenable from a human rights perspective before the pandemic. In recent years, European and international human rights bodies and human rights organisations have identified massive human rights violations,²⁵ including violations of the rights to accommodation commensurate with human dignity, to access to safe drinking water and sanitation and to healthcare but also including violations of the right to access to an asylum procedure that examines one's protection needs – a human right that is based on the right not to be subjected to torture or other inhuman treatment, which is an absolute right, i.e. one that must not be restricted or limited in any way.

The conditions in the refugee camps render persons living there extremely vulnerable to the spread of COVID-19. Particularly in times of crisis like this one, the European Union must ensure that the treatment of refugees satisfies human rights standards. It is imperative and urgent that the pressure on these camps should be relieved; Greece urgently needs support in its efforts to cope with the persons in them, including in the form of admitting as many of them as possible to other EU countries. In the event of a COVID-19 outbreak on the Greek islands, abandoning the people there to their fate would violate the human right not to be subjected to inhuman treatment – a right that must not be limited even during a state of emergency. For the European Union, to do so would be to surrender its identity as a Community of values.

6.2 Preventative stability assistance

The European austerity measures adopted in the aftermath of the 2007/2008 financial crisis resulted in substantial savings in the healthcare sector in many countries, in part because the provision of funds from the European Stability Mechanism was tied to

²⁵ See, for instance: UNHCR (07 Feb. 2020): UNHCR calls for decisive action to end alarming conditions on Aegean islands. https://www.unhcr.org/news/briefing/2020/2/5e3d2f3f4/unhcr-calls-decisive-action-end-alarming-conditions-aegean-islands.html#_ga=2.10434293.1918510987.1581422706-490971656.1580919866; Council of Europe, Commissioner for Human Rights (31 Oct. 2019): Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities. <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>; UN, Office of the High Commissioner for Human Rights (2017): In Search of Dignity: Report on the Human Rights of Migrants at Europe's Borders. https://www.ohchr.org/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf; Human Rights Watch (04.12.2019): Greece: Camp Conditions Endanger Women, Girls. <https://www.hrw.org/news/2019/12/04/greece-camp-conditions-endanger-women-girls>; Human Rights Watch (19.05.2016): Greece: Refugee "Hotspots" Unsafe, Unsanitary. <https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary> (all retrieved: 25.03.2020).

extensive reforms in the recipient countries, whose impacts on human rights were not assessed or considered. Particularly in a crisis like the present one, it is important that assistance should flow quickly to countries which can be expected to face financial difficulties in view of the economic consequences, and ensuring that it does will send a signal that EU member countries recognise their collective human rights responsibility. When designing measures of this kind involving, for example, the European Stability Mechanism, it would be important to ensure that funding for crisis measures necessary in a particular country can be accessed without these payments being tied to extensive reforms in the recipient country. The funds would need to be provided swiftly if they are to serve as preventative stability assistance. If conditions are to be attached to such payments, it is imperative to perform human rights impact assessments of required reforms.

6.3 International efforts to strengthen weak healthcare systems

Another cause for concern is that the healthcare systems of many of the countries that will be affected by the corona pandemic in the months to come are poorly positioned to respond adequately to the challenges posed by this crisis due to systematic underfunding or due to wars. In many countries, healthcare is not accessible to everyone. Neither the supply nor the quality of available healthcare services is adequate, and there is a shortage of medical staff. Thus, it is all the more important during a global pandemic that support provided in the context of development cooperation should not be cut, even in the face of increasing national or European expenditure to fight the corona pandemic and address its adverse impacts on human rights. The international community must strengthen weak healthcare systems. Strengthening functioning public healthcare institutions, both nationally and internationally, is key for this. Advances in the detection and treatment of COVID-19 and in the development of vaccines must be made accessible to all countries throughout the world and products be made available to them at an affordable price. Germany should take a leading role in connection with all of these measures, because the only way to ensure that everyone receives effective protection from the corona pandemic is to ensure that the efforts to fight it are grounded in human rights. Responses that are restricted to individual nations will not provide lasting protections over the long term.

7 Addressing the risk of gradual inurement to limitations

On 16 March, 25 UN special rapporteurs and independent experts reached out to the international public to draw attention to the importance of ensuring that states do not abuse response measures, and specifically not abuse emergency powers, to suppress human rights. Their core message: “emergency responses must be proportionate, necessary and non-discriminatory”.²⁶ These experts have been monitoring developments in many countries, and have identified a risk, particularly in authoritarian states or states on their way to becoming authoritarian, that measures limiting human rights might be used to extend and perpetuate social controls and surveillance and/or that limitations on rights and freedoms might remain in place after the end of the crisis.

This danger is precisely what makes parliamentary and judiciary oversight so important from the perspective of human rights – even in firmly established constitutional democracies. Thus, it is right and proper that members of different factions within the Bundestag have emphasised the necessity of continually reviewing extraordinary regulations to determine whether they are proportionate and when they can be attenuated or abolished.

The national human rights institutions in Europe are currently consulting on how they can monitor developments in this respect in all European countries and call on particular states to respect human rights when reminders of this kind appear necessary. One of the reasons that the continual review and removal of extraordinary regulations relating to the corona pandemic is so essential in Germany and Europe is that it underscores the exceptional nature these regulations, thus helping to prevent a gradual inurement to grave forms of interference in fundamental and human rights on the part of politicians and society.

8 Concluding remarks

The corona pandemic has confronted political decisionmakers in Germany and German society with challenges of a kind the country has never before faced. The question of how to stem the pandemic demands answers that address many dimensions of the crisis at once: its epidemiological and medical dimensions and its societal, social and fundamental and human rights dimensions. The longer the pandemic lasts, the more important it will become that a broad public actively participate in extensive debate on the actions to be taken.

Human rights require that the effects of all such actions on persons living in vulnerable situations should be a primary consideration. The measures put in place thus far are sustained by societal solidarity for those in high risk groups. There is now a need for policymakers and society to stand in solidarity with persons whose human rights need special protection as well. Thus, the commitment to do “whatever it takes” in the way of making funds available must also find political expression in measures benefiting

²⁶ “While we recognize the severity of the current health crisis and acknowledge that the use of emergency powers is allowed by international law in response to significant threats, we urgently remind States that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory.” Statement by 25 special rapporteurs and independent experts of the United Nations, 16 March 2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E> (retrieved: 25 Mar. 2020).

persons in particularly vulnerable situations. The commitment to human rights – which binds all state authority in Germany – demands that it do so.

In the past days, organisations and individuals from civil society have identified areas where action is needed and have proposed specific measures. Some of these have already been incorporated into draft legislation. Here, we see the strengths of the constitutional democracy: deliberation is possible, even under difficult circumstances and time pressures. Deliberation that encompasses as many perspectives as possible is conducive to solutions that are consistent with human rights. Over the weeks and months to come, it will be crucial to maintain and strengthen human rights solidarity, both as expressed politically and in society. And ensuring that exceptional measures remain the exception will require the vigilance of all.

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